

Undersized Lots

Background

The modern system of subdivision was developed in the 19th century as the Lot and Block Survey system. With the rapid expansion of cities into the surrounding rural land, a precise method for the identification of individual properties was necessary. In simple terms, a large tract was surveyed and divided into individual lots and blocks, creating a plat. This plat was filed with the jurisdiction's record-keeping official. In the case of municipalities, this was usually the City Engineer. These plats were filed together in plat books, and the volume number and page number (i.e., liber and folio) made it easy to locate the plat sheets later.

The earliest plats for Rockville date from the 1890's, which predated zoning regulations. As such, there were no restrictions on the size and shape of the lots created. A common practice from that period was to create many small, narrow lots with the idea that a prospective land buyer could purchase as many lots as they wanted (or could afford) to build on. Substantial areas of the city were divided under this system into 25 or 50 foot wide lots. The original Croydon Park subdivision in East Rockville created hundreds of 25 foot wide lots ranging in depth from about 110 to 145 feet deep.

The beginning of the 20th century saw greater interest in how the development of cities could be regulated. The culmination came with the publication of the Standard State Zoning Enabling Act in 1926, followed by publication of the Standard City Planning Enabling Act in 1928. The use of zoning as a means of regulating the types of uses and their locations was given legal imprimatur by the Supreme Court in the Village of Euclid (Ohio) v. Ambler Realty Co. decision of 1926. That case gives us the term "Euclidean" zoning.

Drawing on the Federal guidelines, Montgomery County enacted its initial zoning ordinance in 1928. The State had enacted the Regional District Act to enable the application of zoning. At that time the Regional District only applied to the southern portion of the County. Over the decades, the Regional District area expanded until the entire county was covered by the zoning ordinance in 1958. The following incorporated municipalities were (and still are) exempt from the County's zoning regulations – Rockville, Gaithersburg, Laytonsville, Poolesville, Barnesville, Brookeville, and Washington Grove.

Rockville adopted its first zoning ordinance in 1931, effective in 1932. This first code closely followed the County code. Five zones were established – Residential A, B, and C zones, a commercial D zone and an industrial E zone. The residential A zone was the single family detached zone. It established a minimum lot area of 5,000 square feet with a minimum lot width at the building line of 50 feet. The setback requirements were 25 feet front, seven feet side and 20 feet rear. The Residential B zone was the two-family or duplex zone. Each dwelling was required to have 2,500 square feet of lot area. The setback requirements were 25 feet front, eight feet side and 20 feet rear. The Residential C zone allowed multi-family units with a density limit of 625 square feet per unit, or about 69 units per acre.

The 1932 ordinance included a provision allowing existing lots or parcels with a width between 40 and 50 feet to utilize a five foot side yard setback. The minimum lot area requirement was waived for those lots within the A zone. The effect of the 1932 ordinance was that it took at least two of the 25 foot wide lots to create a buildable property. At that time the minimum area required for building was the property ownership, so construction across lot lines was permitted.

The 1932 ordinance remained fundamentally intact until a major recodification was adopted in 1956, effective October 1, 1957. This new ordinance, again patterned after the County's new ordinance adopted in 1954, established the current zoning categories that are familiar today. The following new one-family residential zones were created – R-S (R-200), R-90, R-75, R-60, and R-40. The R-60 zone established a new minimum lot area of 6,000 square feet for a single-family house with a 60-foot minimum width at the building line. There was a provision in the R-60 zone making previously recorded lots of at least 5,000 square feet legal with a minimum of 50 feet lot width at the building line. The minimum lot width at the street line in all cases was 35 feet. The R-E (R-400) and R-150 zones were added to the code in the 1960's.

Comparison – Residential A Zone with Current Zones

Development Standard	Zone						
	Res. A	R-60	R-75	R-90	R-150	R-200	R-400
Min. Lot Size (sq. ft.)	5,000	6,000	7,500	9,000	15,000	20,000	40,000
Min. Width @ Bldg. Line	50'	60'	70'	80'	90'	100'	150'
Front Setback	25'	25'	25'	30'	35'	35'	50'
Side Setback	7'	8'	9'	11'	13'	13'	20'
Rear Setback	20'	20'	20'	25'	30'	35'	50'

Lots that had been created under the prior ordinance were also addressed with a general "grandfather" section in the General Provisions section of the 1957 code as follows:

Any lot as defined herein, which was legally recorded at the time of adoption of this Ordinance or which appeared on a preliminary plat of subdivision approved by the Mayor and Council prior to the adoption of this ordinance and filed as a recorded plat within six months of the adoption of this ordinance, and which was buildable under the Zoning Ordinance in effect immediately prior to the adoption of this Ordinance, shall be deemed a buildable lot even though it may be less than the minimum area requirements for any R-zone.

Also in the mid-1960's the Planned Residential Unit (PRU) development option was created. This early form of planned development zone allowed for a mix of dwelling unit types, local commercial uses, and recreational facilities. Projects such as New Mark Commons and Rockshire were among the first PRU developments approved. The PRU was a type of overlay

zone, since the underlying original zoning was kept in place. But it did allow for flexibility in lot sizes and shapes.

As noted above, until the adoption of the 1957 code buildings could be built across lot lines since the land area was based on deed ownership. This accommodated buildings that had been built on the very narrow lots that had been created prior to 1932. Buildings that crossed lot lines became development standards nonconformities. They could be repaired and added to so long as the nonconformity was not increased. These activities could occur within the existing footprint but could not extend across a lot line that had not been previously crossed.

If the house was razed for new construction, then the property had to be re-recorded as a new record lot. The 1957 code established the requirement that houses had to be built on a single record lot.

The zoning ordinance received its next major recodification in 1974, effective January 1, 1975. This ordinance, with amendments, continued in effect until the 2008 major revision. The 1975 ordinance included a chapter on the subdivision regulations. In 1976 a specific provision was added in the development standards tables for “R-60 Qualifying Undersize Lots”. This term was defined as “...those lots with a net area of less than 6,000 square feet but at least 5,000 square feet, or with a width at the front building line of less than 60 feet but at least 50 feet and which were shown on a plat or deed recorded prior to October, 1957.” This language reflects the same provision from the 1957 ordinance.

In the General Limitations section of the 1975 code, language very similar to the “grandfather” provision of the 1957 code was included. Also included in the 1975 code was a definition of a buildable lot, as follows:

Any record lot meeting the minimum lot area and lot frontage requirement of the zone in which it is located.

The 1975 ordinance also included two optional residential development procedures – The Variable Lot Size Development and the Cluster Development. Both of these options allowed for lot sizes smaller than the zone normally allowed and established a maximum density for these areas. This provided flexibility in how the lots were arranged within the subdivision so long as the average of all the lot sizes was no less than the minimum lot size for the zone. The minimum lot standards for both variable lot and cluster development were the same. The difference was that under the cluster option the land area not included in the lots had to be dedicated to the City for a public park. Under the variable lot option, open space could be created that was controlled by the homeowner’s association. The 1975 ordinance also carried forward the PRU development option.

The current zoning ordinance was adopted in December 2008 and became effective in March 2009. The regulations concerning undersized lots were generally consistent with the final version of the prior ordinance. As part of the overall effort to further clarify the language in the

new ordinance, several text amendments have been processed. Among these was TXT2010-00225, which was adopted by the Mayor and Council in September, 2010. Among the changes was a revision to the definition of a buildable lot. At the time of the effective date the definition was worded as shown just above. However, the definition did not directly address the issue of lots created before zoning or created under earlier codes. The definition was therefore amended to read as follows (the current language):

Any record lot except for lots created prior to August 3, 1932 in a Single Dwelling Unit Residential zone that contain less than 4,000 square feet in area or are less than 35 feet wide at the building line.

This change set a lower limit for the size lot that could be developed. There are a few vacant lots in the city that do not meet this minimum standard. The determination was made that development on such small lots was impractical and not consistent with the character of the surrounding neighborhood.

The current code continues to regulate the development of undersized lots via the standards for lots in the R-60 zone as contained in Article 10, and through the provisions of Section 25.21.03 in Article 21. These provisions read as follows:

25.21.03 – Recordation of an Existing Single Unit Detached Dwelling Residential Lot or Property

- a. *Purpose* – To provide a process for recording an existing residential property on a Final Record Plat among the Land Records of Montgomery County, Maryland, whether or not the property meets the current standards for a developable lot, so as to allow for the development or redevelopment of the property.
- b. *Required Criteria* – The Planning Commission must approve a plat, only when one or more of the following conditions are met and the plat has frontage as required in the zone or public access to a public street:
 - 1. The property being platted is a deeded lot that has existed in the same configuration since at least October, 1957;
 - 2. The property being platted is:
 - (a) a multiple-lot property that required a minimum of two (2) lots for development at the time the substandard lots were created,
 - (b) the property has been under common ownership since at least October, 1957, and
 - (c) the plat seeks to consolidate the lots into a single record lot; or
 - 3. The property being platted is a multiple-lot property that contains an existing house that straddles the common lot line and the plat seeks to consolidate the property into a single record lot.

- c. *Other Properties* – The assemblage or division of properties that do not meet the above criteria are considered subdivision or resubdivision and must be processed under the subdivision plat process.

Current Administration

The foregoing discussion is intended to highlight the fact that the code has had to take note of previous development actions that have occurred over the past century plus. The general intent has been to minimize adverse impacts on those prior approvals and preserve property rights, especially with regard to single-family houses. Undersized lots are those lots that are smaller than the standards of the current zone and/or are less than the minimum width requirement at the building line.

Administration of undersized lots can be characterized as follows:

- In the R-60 Zone, recorded lots of at least 5,000 square feet and a street frontage of at least 50 feet are regulated under the “R-60 Qualifying Undersized Lots” provisions. Development on these lots must comply with the normal front and rear yard setbacks of the R-60 zone, but the side yard setbacks are reduced from eight feet to seven feet. The reduced side yard setbacks reflect the standards of the pre-1957 Residential A zone.
- Existing development on pre-1932 lots and deeded parcels may continue so long as the property(-ies) have retained their same size and shape from prior to October, 1957 and have continued under unified ownership.
- Record lots in any zone are deemed buildable if they are at least 4,000 square feet in area and have a minimum of 35 feet of frontage. Under the provisions for Lot Area under Section 25.03.03.c.4(a).iii, if the lot is narrower than the minimum width required in the zone the side yard requirements can be reduced to those in effect in the next highest density residential zone. As an example, if a record lot in the R-90 zone is less than 9,000 square feet, the side yard setbacks would be reduced from 11 feet to 9 feet, the standard in the R-75 zone.
- A house on a property that straddles lot lines may continue as a development standards nonconformity. However, if the house is razed or destroyed, the property must be consolidated into one record lot under the provisions of Sec. 25.21.03 cited above before any new construction can occur.
- Lots within cluster or variable lot developments must conform to the minimums established for each type of development. The 2008 ordinance eliminated the variable lot option and consolidated development under the cluster option since the development standards were the same for both. The requirement for park dedication was deleted. These regulations are contained in Sec. 25.21.14 of the ordinance.
- Lots that are a part of one of the optional development methods in the prior ordinance (PRU, Comprehensive Planned Development) are regulated by the specific development standards approved in conjunction with the plan approval. These projects are grouped under the Planned Development Zones provisions in Article 14. These PDs include a

designated equivalent residential zone to regulate any aspects of the development plan not specifically addressed in the governing documents that are a part of the project approval.

The general approach to regulating residential development has been to minimize the impact of newer regulations on existing developments. When the new ordinance and companion comprehensive zoning occurred in 1957, the R-60 zone was generally applied to all of the areas that had been developed under the Residential A zone. As noted in the background section, there was a provision allowing existing developments to continue and allow new development on lots that at least met the standards of the A zone. Further refinements to these grandfather provisions have been inserted over the years, the most recent being the revised definition of “Buildable Lot” specifically requiring a record lot to be at least 4,000 square feet in area and 35 feet wide at the building line to qualify as buildable.

Currently, development on the undersized lots must conform to the front and rear yard setbacks of the current zone. The difference is the allowable reduction in the side yard setbacks. The provision for the qualifying R-60 lots allows a reduction from 8 feet to 7 feet for the side yard. In other cases, the reduction is dependent on the standards for the next highest density zone. If the Mayor and Council wish to alter these regulations, the suggestion would be to consider the existing development on the adjoining sides. If the existing houses have reduced setbacks, then the reduction would be allowed for the subject site. If the adjoining homes meet or exceed the zone standards, then the current standards for the zone would be enforced for the subject site.